IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

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WRIT PETITION NO. 3990 /1994

PETITIONERS: Divisional Forest Officer
Social Forestry, Bilaspur & another

v/s

RESPONDENTS: Shanker Singh & another

PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA:

1. Particulars of the petitioners;

(1)- Divisional Forest Officer,
Social Forestry, Bilaspur (M.P.).

(2)- Forest Extension Officer,
Social Forestry, Post Office,
Pathariya District Bilaspur.

2. Particulars of the respondents;

(1)- Shanker Singh S/o Tikaram Singh aged about 42 years by occupation Labour R/o Village Hathkera Post Bawali District Bilaspur.

(2)- Presiding Officer,
Labour Court, Bilaspur.

(87)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Writ Petition No. 3990 of 1994**

Divisional Forest Officer,
Social Forestry, Bilaspur
and another

-Vs-

Shankar Singh and another

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Appearance

Shri P.S. Koshy, Deputy Advocate General for the State/ petitioners.

Shri S.P. Kale, counsel for respondent no.1.

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**ORDER**
**(04.8.2005)**

**Sunil Kumar Sinha, J**

**(1)** This writ petition has been filed challenging the impugned award dated 24.8.1994 passed by the Labour Court, Bilaspur in Case No.52/IDA/91(Ref.).

**(2)** Admittedly, a reference was made to the Labour Court in the following terms.

> *"Whether the removal from service of Shri Shankar Singh Kshatri is valid and justified ? If not, to what relief he is entitled to and what directions should be issued to the employer in this regard ? "*

**(3)** The case of respondent no.1 is that he was appointed on daily wages on the post of *Chowkidar* in Forest Plantation at village Hathkera in Bilaspur District. He worked there from September 1985 to December 1990. He was removed from service ~~from service~~ in the month of January 1991. The contention of respondent no.1 is that he had worked for more than 240 days, therefore, his service would not have been

terminated without necessary compliance of the provisions of section 25F of The Industrial Disputes Act 1947 (hereinafter referred to as "the Act"). Respondent no.1 had prayed for his reinstatement with all back-wages before the Labour Court.

**(4)** The contention of the petitioners before the Labour Court was that respondent no.1 had worked as *Chowkidar* from September 1985 to December 1988 on muster roll. It was contended by them that the respondent no.1 was appointed on daily wages to look after the plantation in the village and when the work of plantation was over, he was to be removed, therefore, there is no illegality in removal. In fact, respondent no.1 was appointed for a particular purpose. It was also contended that the action of the State does not amount to retrenchment of the workman within the meaning of section 25F of the I.D. Act, therefore, there was no necessity of serving any notice upon respondent no.1 and there was also no necessity of conducting any enquiry before his removal from service. They had justified the removal and prayed for dismissal of the claim.

**(5)** In light of the rival claims before it, the Labour Court recorded evidence of both the parties. Respondent no.1 examined himself before the Labour Court. In his oral evidence, he deposed that he was appointed in the year 1985 and he continuously worked till the year 1990 on daily wage basis. He had filed a certificate vide Annexure P-1 which was issued by *Van Vistar Adhikari* (Forest Extension Officer) which shows that he worked continuously for the said period on the said post. In the cross examination also he has clearly stated that he had worked from 1985 to 1990 continuously and there was no break in his service. One Shri H. N. Pandey was examined on behalf of the petitioners before the Tribunal who had stated that the respondent no.1 was appointed as a *Chowkidar* in the aforesaid plantation and his appointment was on muster roll basis. He produced one document (Ex.D-1)

which was a summary of the muster roll in which also the work of respondent no.1 was shown. In Para 5 of the cross examination, he had admitted that as per Ex.D-1, the respondent had worked continuously for the period mentioned therein except the leave period.

**(6)** The tribunal after appreciating the evidence of both the parties came to conclusion that respondent had continuously worked on the post of *Chowkidar* since 1985 till the date of his removal.

**(7)** The tribunal also took this view that the provisions of Section 25F of the I.D. Act have not been complied with and the removal of respondent no.1 was illegal. The tribunal granted the relief of reinstatement alongwith full back-wages to respondent no.1. It is against this order the present writ petition has been filed.

**(8)** Learned counsel for the petitioners submits that the service of respondent no.1 was discontinued due to completion of the plantation work and since engagement of respondent no.1 was purely on daily wages, therefore, no right has accrued in favour of respondent no.1 to continue in service.

**(9)** I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

**(10)** First of all, it is to be determined as to whether the removal of the respondent no.1 amounts to retrenchment or not within the meaning of section 25-F of the Act. If we examine the case of respondent no.1 and claim raised by him before the tribunal, it would appear that respondent no.1 was continuously working from the year 1985 to the year 1990 and thereafter he was removed from his service. Section 25F of the I.D. Act provides that no workman employed in any industry who has been in continuous service for not less than one year

under an employer shall be retrenched by the employer unless the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice. It has been held in the matter of ***Rattan Singh –Vs- Union of India and another (1997) 11 SCC 396*** that even a daily rated workman who had continuously served for the requisite statutory minimum period in a year, his services shall not be terminated without complying with the provisions of section 25F of the Act.

**(11)** In the present case also, respondent no.1 was working on the daily wages and after continuously working for such a long period, his services were terminated, therefore, it can be said that the aforesaid termination of services of respondent no.1 amounts to retrenchment within the meaning of section 25F of the I.D. Act.

**(12)** Coming to the next point raised by learned counsel for the petitioners that since the work for which the employment offered was over, therefore, the termination of service of respondent no.1 can be justified. In the opinion of this court, the provisions of the Industrial Disptues Act does not classify the workmen on the basis of nature of their employment which relates to a particular work with reference to the period thereof. Once a person is classified within the definition of workman as stated in section 2(s) of the Act, then the "purpose of employment for a particular work" for attracting section 25F of the Act would be immaterial. What is to be seen is as to whether the conditions precedent to retrenchment of workmen have been followed or not. If the Courts or Tribunal come to the conclusion that the conditions precedent to retrenchment have not been followed, then, the consequences are to be followed. Here the Tribunal has passed a reasoned award after giving positive finding in relation to the non-compliance of conditions of section 25F of the Act. This ground raised by

learned counsel for the State for assailing the said finding recorded by the Tribunal does not seem to be reasonable. This argument cannot be accepted in view of the provisions of section 25F of the Act and the same is rejected.

**(13)** I do not find any merit in the writ petition and the petition is dismissed. The award of reinstatement alongwith back-wages passed by the tribunal is hereby confirmed. It is stated by the counsel for respondent No.1 that respondent no.1, after passing of the award, had joined on 15.11.1994. Therefore, respondent no.1 would be entitled for the back-wages from the date of removal to the date of reinstatement i.e., up to 15.11.1994 only.

No order as to costs.

Sd/-
Sunil Kumar Sinha
Judge